

24 November 1978

MEMORANDUM TO: Mr. Robert W. Gambino
Chairman, DCI Security Committee

THROUGH: [REDACTED] STAT
Executive Secretary, DCI Security Committee

FROM: [REDACTED] STAT
Staff, DCI Security Committee

SUBJECT: Executive Order 10450 - Recommendation
for CIA Initiative

1. As you are aware, in August 1977, the Civil Service Commission submitted a draft of a proposed revision of Executive Order 10450 to Office of Management and Budget (OMB). This draft, the last in a series of drafts that have been submitted to the OMB during the previous 1-1/2 years, is attached hereto. Please note that CIA and the Intelligence community are exempt therefrom.

2. In order to put this matter in its proper perspective, it is necessary to go back to the final days of the Ford administration. At that time, after approximately two years work, a draft revision of E.O. 10450, initiated by the Domestic Council was submitted to OMB. In response thereto, on 23 December 1976, the Agency submitted a letter over the signature of then Director Bush with the Agency proposal for OMB consideration. (At that time, the draft under consideration by OMB contemplated a five year background investigation - the Agency was given a partial exemption). The Agency's response took the position that we preferred to have a single uniform background investigation that met the standards of DCID 1/14 and that if this was not acceptable, the Agency desired a complete exemption for CIA and the Intelligence Community. No action was taken on this draft in the closing days of the Ford administration or in the early days of the Carter administration.

3. Early in 1977, the OMB directed the Civil Service Commission to come up with a new draft revision of E.O. 10450. There was no official coordination or participation by other federal agencies. The results of the Civil Service Commission's efforts are the August 1977 draft referred to above which is attached. At that time, prompt OMB action was anticipated;

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however, no action has been taken to date and none is anticipated in the near future. It is submitted in that connection that the recommendations to exempt CIA and the Intelligence Community are viewed as being inconsistent with other actions taken by the administration.

4. I believe the time is now right for the DCI to take the initiative in this matter and to propose the revision of E.O. 10450 to the President. Such a revision, hopefully, would contain sufficiently high enough standards to satisfy CIA requirements that it would be unnecessary to recommend an exemption for the IC. Hopefully, this draft would establish a single standard for the entire Executive Branch of government. It is recognized in this connection that we might have to compromise and accept less than a fifteen year BI for access to national defense information, but this would be a decided improvement over the five year BI currently utilized by most of the government agencies and the recommendation that is perpetuated in the draft of August 1977. (As you are aware, DoD is now considering a test program to reduce the five year BI still further).

5. It is admitted that our position might be stronger if we waited until we obtained the result of the investigative survey that we have initiated and will be completed on 31 January 1979. However, it is submitted that we should now initiate some sort of a memorandum to the DCI to ascertain his desires in the matter. If the DCI is willing to take the initiative in this matter and present a draft to the White House, then we can suggest that the implementation be delayed pending the results of our survey. This should save us at least one (1) month.

6. The advantages of this proposal are many. Perhaps the most important is that it would obviate the necessity of SECOM action to come up with standards for the Community when and if the current draft is approved by the President (assuming the CIA/IC exemption remains). It is submitted it would be difficult, if not impossible, to sell DoD on a BI scope in excess of five (5) years under such circumstances. In addition to obtaining a more favorable BI, my proposal, if successful, would eliminate the need for a tremendous number of man hours to develop and implement IC standards and procedures.

7. It is respectfully submitted that to do nothing in this matter will invite further controversy and problems with the Department of Defense and other elements of the Intelligence Community, while the BI is subject to continual erosion throughout the Executive Branch of the government.

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8. I do not believe that the Carter administration will take any action on the August 1977 draft unless and until some agency or agencies of the Executive Branch make a strong recommendation regarding same. I sincerely believe that the time will never be better for us to obtain a favorable decision in this matter and therefore strongly recommend your approval for the preparation and internal coordination of a memorandum to the DCI recommending that he forward our draft proposed revision of E.O. 10450 to the White House for approval. No further action will be taken by the undersigned pending your instructions. STAT

Attachment



Distribution:

- Original - Addressee
- 1 - SECOM Subject
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SECOM/[] jm/24 November 1978

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Handwritten: CSC draft to OMB

WHEREAS the national interests require that all persons privileged to be employed in the Federal Government shall be trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the Federal Government be adjudged by consistent and uniform standards which comport with the individual's right of privacy;

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 1101 et seq., 1304, 3301, 3333, 7301, 7311, and 7501 et seq. of Title 5 U.S.C., the National Security Act of 1947 (50 U.S.C. 401 et seq.), and the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.); and as President of the United States, and deeming such action necessary in the national interest and in order to protect the rights of citizens seeking employment or employed by the United States, it is hereby ordered as follows:

Section 1. Revocation of E. O. 10450. This Order shall become effective 180 days after the date hereof; Executive Order 10450 of April 27, 1953, as amended, is then revoked, except that determinations made under E. O. 10450 will not have to be readjudicated.

Section 2. Purpose of the Order. The purpose of this Order is to establish uniform standards for classifying positions as to their sensi-

tivity; define the types of investigation conducted for making hiring, retention or access determinations under this Order; delineate the authority and responsibilities of the departments and agencies in the implementation of this Order; and establish effective oversight to assure that department and agency implementation of the policies set forth herein is consistent with the interests of the nation and the constitutional and civil rights of the individuals concerned.

To insure consistent application of the standards and procedures contained herein, there shall be established a uniform Federal Personnel Security Program operating under the policies and procedures developed by the Civil Service Commission and the Department of Justice.

Section 3. Applicability. In addition to the departments and agencies specified in the Act of August 26, 1950, and Executive Order 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government. The provisions of this Order shall apply to all executive branch agencies including any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States, the United States Postal Service, Postal Rate Commission, and competitive service positions in the legislative branch. All other legislative and judicial branch organizations may, upon request, utilize the investigative services provided by this Order.

This Order shall not apply to the Director of Central Intelligence or the organizations constituting the intelligence community as defined by

Executive Order 11905, except the Director of Central Intelligence shall prescribe standards for access to sensitive compartmented information.

Section 4. Standard for Personnel Security. The appointment or retention of each civilian officer or employee in any department or agency is contingent upon the meeting of the following standard:

The personnel security standard shall be whether or not in the interest of the United States the employment or retention in employment of the individual is advisable.

In applying this standard a balanced judgment shall be reached after giving due weight to all the evidence, both favorable and unfavorable, the nature of the position, the mission of the agency, and the value of the individual to the public service.

Section 5. Sensitivity of Positions. Each department or agency shall classify each position as either sensitive or nonsensitive.

(a) The criteria to be applied by the heads of the departments or agencies in designating a position as sensitive are:

(1) Access to information classified as Secret or Top Secret under Executive Order 11652.

(2) Duties involved in the conduct of foreign affairs;

(3) Development or approval of plans, policies or programs which affect the overall operations of a department, agency or organi-

(4) Investigative duties, the issuance of personnel security clearances, or the making of personnel security determinations;

(5) Duties involved in approving the collection, grant, loan, payment or other use of property or funds of high value, or other duties demanding the highest degree of public trust and confidence;

(6) Duties involved in the enforcement of laws, or responsibilities for the protection of individuals or property;

(7) Duties, whether performed by Federal employees or contractors, involved in the design, operation or maintenance of Federal computer systems, or access to data contained in manual or automated files and records or Federal computer systems, when such data relates to national security, personal, proprietary or economically valuable information, or when the duties or data relate to distribution of funds, requisition of supplies or similar functions; or

(8) Duties involved in or access to areas which have a critical impact on the national security, economic well-being of the nation, or public health or safety.

(b) All other positions shall be designated as nonsensitive.

Section 6. Personnel Security Investigations.

(a) General - The appointment of each civilian officer or employee in any department or agency shall be made subject to an investigation conducted for the purpose of developing information relevant to determining whether such appointment is in conformance with the standard specified

in Section 4 of this Order. The information to be obtained shall relate to the character, reputation, and loyalty of the individual under investigation.

The scope of the investigation shall be determined in the first instance according to the sensitivity of the position, but in no event shall the investigation include less than a National Agency Check, as defined by the Civil Service Commission; except that, upon the request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize a lesser investigation with respect to per diem, intermittent, temporary or seasonal employees, or aliens employed outside the United States.

(1) Sensitive Positions. The investigation to be conducted for persons who are to occupy sensitive positions shall be conducted prior to appointment, or before the individual assumes the duties of the position. The scope of the investigation shall consist of no less than a full field investigation, as defined by the Civil Service Commission. (Syem BI)

(1) In case of an emergency, a sensitive position may be filled by a person for whom the required investigation has not been completed if the head of the department, agency, or major organizational component involved, or a designee who is directly responsible to such authority, finds that such an assignment is not contrary to the national interest.

(2) Nonsensitive Positions. The investigation to be conducted for persons who occupy nonsensitive positions shall consist of no less than a National Agency Check.

If the duties of the position require access to information classified as Confidential under Executive Order 11652, or the position is classified at grade GS-9 or above, or an equivalent rank, the investigation shall consist of a National Agency Check and written inquiries to local law enforcement agencies, educational institutions, former employers, supervisors and references. The investigation may be conducted after appointment, but before access clearance is granted. The investigation for positions classified at GS-8 or below and not requiring access shall consist of a National Agency Check conducted after appointment.

(b) Investigative Responsibility. The investigation of persons entering or employed in the Federal service, including experts and consultants however employed, shall be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law, or by agreement with the Civil Service Commission.

(c) Referral of Cases to the Federal Bureau of Investigation. Whenever, during the conduct of the investigation, information is developed which indicates that an individual may have acted or been coerced, influenced or pressured to act in a manner contrary to the national interests, the case shall be referred promptly to the Federal Bureau of Investigation under guidelines promulgated by the Attorney General.

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Section 7. Due Process. No person may be denied eligibility for appointment, denied appointment in the Federal service, denied a clearance suspended or removed from a position in the Federal service by any department or agency for failure to meet the standard set forth in Section 4 of this Order without being advised of the reasons therefor and given opportunity to respond; any such action, either proposed or approved, shall be taken in accord with applicable law and regulation.

Section 8. Determinations Related to National Security. The reinstatement, restoration to duty or reemployment of an individual suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the Act of August 26, 1950 (5 U.S.C. 7531 et seq.), or pursuant to Executive Order 9835, Executive Order 10450, or any other security or loyalty program relating to officers or employees of the Government, shall be in accordance with the provisions of the said Act.

Section 9. Review of Unfavorable or Questionable Information Arising Subsequent to Favorable Determination. Whenever there is developed or received by any department or agency information indicating that the retention of any civilian officer or employee in the Federal service may not be in the best interests of the Government, such information shall be forwarded to the head of the department or agency concerned, or to a designee, who, after such investigation as may be appropriate, shall review or cause to be reviewed the unfavorable or questionable information, and determine whether the retention of the

person concerned is consistent with the standard set forth in Section 4 of this Order.

Section 10. Program Implementation and Management.

(a) General Policy Oversight. The National Security Council shall exercise oversight over the Civil Service Commission and the Department of Justice in the operation of the Federal Personnel Security Program.

(b) Civil Service Commission. The Civil Service Commission shall:

(1) issue, within 90 days of the date of this Order, a program directive which will prescribe:

(i) criteria to be used in making a determination under the standard set forth in Section 4 of this Order;

(ii) the scope of investigations conducted under this Order;

(iii) instructions related to the protection of the individual's rights;

(iv) guidelines with respect to the updating of investigative

(v) minimum standards for the selection and training of program personnel; and

(vi) instructions dealing with the use, control, release, maintenance and disposal of investigative reports.

(2) furnish investigative support, upon request, to the legislative and judicial branches of the Government, and to all other Federal Government entities electing to be subject to the provisions of this Order;

(3) establish and maintain a security-investigations index, covering all persons as to whom personnel security investigations have been conducted under this Order, whether by the Civil Service Commission or any department or agency of the Executive Branch. The index shall contain the name of each person investigated, adequate identifying data concerning such person, identification of the department or agency which has conducted an investigation concerning the person, or has suspended or terminated the employment of such person under the authority granted to the heads of departments and agencies by or in accordance with the Act of August 26, 1950. The Security-Investigations Index established and maintained by the Civil Service Commission under Executive Order 10450 of April 27, 1953, shall be made a part of this Index;

(4) develop and prescribe standard forms to be used to implement the program;

(5) establish a clearing house for program management information;

(6) develop and prescribe statistical reporting procedures designed to facilitate analysis of the effectiveness of the Order; and

(7) evaluate the manner in which the Order is being implemented throughout the Federal Government, prescribe corrective action or

modification to the heads of departments or agencies concerning deficiencies noted, and submit to the National Security Council an annual report detailing the Commission's appraisal findings and the extent of department and agency compliance.

(c) Department of Justice. The Department of Justice shall:

(1) issue, within 90 days of the date of this Order, a program directive which will prescribe:

(i) guidelines for the referral of cases to the Federal Bureau of Investigation, as provided for in Section 6(b) of this Order, and establish the criteria for the use of the information developed by these investigations in the adjudication of such cases; and

(ii) guidelines with respect to the use of the polygraph, voice analyzer, or other similar technical equipment for employment screening and in the conduct of personnel investigations.

(2) provide assistance and advice to the heads of departments and agencies regarding the implementation of this Order with respect to actions taken for reasons of national security against applicants and employees.

(d) Departments and Agencies. The departments and agencies, or the heads thereof, shall:

(1) issue, within 90 days of the date of the directives cited in subsection (b)(1) and subsection (c)(1) of this Section, appropriate regulations implementing the policies and procedures of this Order;

(2) implement the program directives, policies and procedures prescribed by the Civil Service Commission and the Department of Justice;

(3) establish a central personnel security office, responsible for adjudicating cases, granting access clearance and maintaining program records as prescribed by the Civil Service Commission;

(4) furnish to the Civil Service Commission information as prescribed by the Commission appropriate for the maintenance of the security-investigations index; and

(5) implement any corrective action or modification prescribed by the Civil Service Commission with respect to the Commission's program appraisal responsibility.